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10/733,414	12/12/2003	Caitlyn Curtin	3681-000001/US	9098
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HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 8910 RESTON, VA 20195				
			EXAMINER GRAVINI, STEPHEN MICHAEL	
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			3749	

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**Group 3700**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/733,414  
Filing Date: December 12, 2003  
Appellant(s): CURTIN, CAITLYN

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John E. Curtin  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed September 26, 2005 appealing from the Office action mailed June 2, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,822,878	JONES	10-1998
6,038,786	AISENBERG et al.	3-2000
5,590,622	BAHMAN	1-1997

5,857,263

CHAN

1-1999

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

Claims 1-3, 5-6, 8, and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (US 5,822,878). Jones is considered to disclose the claimed dryer comprising:

a diffuser **30**, **34**, or **36** for allowing air to exit or to dry a surface of a user's body as disclosed in column 4 lines 43-53 of Jones wherein the disclosed operator can be interpreted to be the disclosed user since the surface of the user's body is the disclosed vehicle (and wherein the disclosed nozzle is considered to anticipate the claimed diffuser because both allow air to exit in order to dry a surface of a user's body as claimed and the claimed user is broadly and reasonably construed in light of the specification to include any being capable of being prevented from touching movement means as specified in paragraph [0014], or may be user held as specified in paragraph [0015], or allow mirror use as specified in paragraph [0015] such that claimed diffuser is capable of performing the intended use of allowing air to dry a user's body surface);

movement means **46** & **48** for moving the diffuser over a wide range of angles in order to dry different parts of the surface (wherein the disclosed motor **46** whose output shaft is connected via a belt and pulley system **48** is considered to anticipate the claimed movement means because at column 5 line 35 through column 6 line 55, a

Art Unit: 3749

wide range of drying angles is expressly disclosed, especially at column 6 lines 18-31);  
and

control means **52** for sending instructions to the movement means in order to control the movement of the movement means over the wide range of angles (wherein the disclosed screw drive **50** received in a receptacle assembly **52** connected to nozzle **30** via arms **54** and **56** is considered to anticipate the claimed control means because at column 5 lines 47-51, mechanical structure inherently sends instructions to the claimed movement means to control a wide range of drying angles because it is this disclosed linkage that causes movement of one element, i.e. screw drive **50**, to “instruct” movement to be “sent” to another element such as a nozzle **30**). The control means has not been construed to invoke the sixth paragraph of 35 USC 112 since the means for language is used, which is further modified by functional language, but is not considered to be modified by sufficient structure, material or acts for achieving the specified function (since control means ... for sending is interpreted as a sufficient act for achieving a control function). Jones is also considered to disclose the claimed securing means **62**, wide range of angles selection (column 6 lines 18-23), preprogrammed movement control means (column 6 lines 1-17), programmable control means **214**, a muffler (column 5 lines 6-9), a timer (column 4 line 47), and wherein the control means is operable to send the instructions to the movement means without the need for a user to access the control means (column 11 lines 54-64). The Office construes the claimed invention under the current practice for claim language falling

within 35 USC 112, sixth paragraph, as discussed above in the rejection. Please see MPEP 2181 for examination analysis.

***Claim Rejections - 35 USC § 103***

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Aisenberg et al. (US 6,038,786). Jones is considered to disclose the claimed invention, as discussed above under the anticipatory rejection, except for the claimed transceiver for detecting the presence or absence of a user, which is interpreted to be a motion or proximity sensor. Aisenberg, another dryer, is considered to disclose the claimed transceiver at column 7 lines 23-39. It would have been obvious to one skilled in the art to combine the teachings of Jones with the considered disclosed transceiver, disclosed by Aisenberg for the purposed of controlling user drying operations by automating the activation of a drying means by proximity or motion sensing.

Claims 7 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones. Jones is considered to disclose the claimed invention, as discussed above under the anticipatory rejection, except for the claimed lightweight material construction and heat sensitive, resistant, or tolerant material. It would have been an obvious matter of design choice to provide any type of construction material, since the Appellant has not patentably distinguished those types of claimed construction material from those found in the prior art cited in this action, along with the fact that any of the prior art references teach that it would be obvious to provide lightweight material construction and heat sensitive, resistant, or tolerant material.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Bahman (US 5,970,622). Jones is considered to disclose the claimed invention, as discussed above under the anticipatory rejection, except for the claimed removable remote control. Bahman, another dryer, is considered to disclose the claimed removable remote control at column 2 lines 23-34. It would have been obvious to one skilled in the art to combine the teachings of Jones with the considered disclosed removable remote control, disclosed by Bahman for the purposed of controlling user drying operations by allowing remote access for control.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Chan (US 5,857,263). Jones is considered to disclose the claimed invention, as discussed above under the anticipatory rejection, except for the claimed retractable power cord. Chan, another dryer, is considered to disclose the claimed retractable power cord at column 2 lines 29-40. It would have been obvious to one skilled in the art to combine the teachings of Jones with the considered disclosed retractable power cord, disclosed by Chan for the purposed of changing the length of the power supply for the drying and allowing dryer use at different locations.

#### **(10) Response to Argument**

##### *anticipatory rejection*

Appellant argues that the claimed statement of intended use reciting “a diffuser for allowing air to exit or to dry a surface of a user’s body” patentably distinguishes the claimed invention over the prior art. Current Office practice generally limits patentability of intended use steps unless the invention claims a different structure or mechanical

intervention from the prior art. In this case the teachings of the primary reference are capable of performing the intended use step since the disclosed dryer can be used to dry a surface of a user's body.

Appellant further argues that the exclusive use and safety concerns of primary reference Jones would patentably define the claimed invention over the prior art. Although exclusive use and safety are not claimed, the claimed invention could feasibly be practiced by the teachings of Jones.

Appellant points out that Jones expressly discloses that the operator of the vehicle is typically inside the vehicle during the drying process as discussed in the rejection above but not that the surface of a person's body is dried. The surface drying of a person's body is not claimed, it is the "surface of a user's body" which is claimed and can be reasonably and broadly construed to include the vehicle operator "typically" (column 4 line 45) inside the vehicle during the drying process. Since typically can be interpreted to include a vehicle operator outside the vehicle, Jones may expressly disclosed the claimed "surface of a user's body."

Appellant independent broad claim of a wide range of angles is considered to be expressly disclosed at column 6 lines 18-31 along with the specific narrower range dependently claimed. The disclosed oscillating nozzles is considered to expressly anticipate the claimed movement means, contrary to appellants assertion that movement means is not an oscillation from the nozzles over the claimed range. The argued Coanda effect is noted but is not considered as relevant is the disclosed oscillating angle range cited in the rejection and in this response to arguments.



Primary reference Jones is considered to anticipate the claimed invention and examiner respectfully disagrees with appellants assertion to the contrary.

*obviousness rejection*

Appellant traverses the first obviousness rejection on two grounds.

First, Appellant asserts that primary reference Jones does not teach the claimed invention so the obviousness rejection in view of secondary reference Aisenberg should be withdrawn. Since the anticipatory rejection is considered proper, that rejection is maintained along with the obviousness rejection set forth in that rejection above.

Second, Appellant asserts that primary reference Jones and secondary reference Aisenberg would be improper to combine those references. The first obviousness rejection is considered to properly state the missing elements and discuss the appropriateness of combining those references. Appellant asserts that combination is impermissible based rendering the references unsatisfactory for their intended purposes or require the references' principle of operation to be modified. Both the primary reference and the secondary reference are in the field of analogous art of dryers. The claimed transceiver for detecting the presence or absence of a user, which is interpreted to be a motion or proximity sensor, is not considered to render modification of the prior art unsatisfactory for its intended use because a motion or proximity sensor in primary reference would allow a body passing under the independently claimed dryer to activate that dryer and satisfactorily operate for its intended purpose, i.e. drying. Likewise the principle operation of Jones is drying and the proposed modification of the claimed transceiver for detecting the presence or absence of a user, which is

interpreted to be a motion or proximity sensor, would not change the principle operation of the drying of that reference, because drying would be accomplished regardless of how the drying is activated.

Secondary reference Aisenberg is considered to obviate the claimed invention and examiner respectfully disagrees with appellant's assertion to the contrary.

Appellant traverses the second obviousness rejection because it is not clearly understood why the choice of material properties with respect to weight, resistance, sensitivities, or tolerance is not a matter of design choice. Each claimed property is not considered to patentably distinguish the claimed features over the prior art because those features are found in the cited prior art to this application and the claimed invention would perform substantially the same way, with substantially the same result, using substantially the same means. The second obviousness is considered proper and examiner respectfully disagrees with appellant's assertion to the contrary.

Appellant asserts that the third obviousness rejection is improper because primary reference Jones and secondary reference Bahman would be improper to combine those references. The third obviousness rejection is considered to properly state the missing elements and discuss the appropriateness of combining those references. Appellant asserts that combination is impermissible based rendering the references unsatisfactory for their intended purposes or require the references' principle of operation to be modified. Both the primary reference and the secondary reference are in the field of analogous art of dryers. The claimed removable remote control is not considered to render modification of the prior art unsatisfactory for its intended use

Art Unit: 3749

because a removable remote control in primary reference would allow a user to operate the independently claimed dryer to activate that dryer and satisfactorily operate for its intended purpose, i.e. drying. Likewise the principle operation of Jones is drying and the proposed modification of the claimed removable remote control, would not change the principle operation of the drying of that reference, because drying would be accomplished regardless of how the drying is activated. Secondary reference Bahman is considered to obviate the claimed invention and examiner respectfully disagrees with appellant's assertion to the contrary.

Appellant asserts that the fourth obviousness rejection is improper because primary reference Jones and secondary reference Chan would be improper to combine those references. The fourth obviousness rejection is considered to properly state the missing elements and discuss the appropriateness of combining those references. Appellant asserts that combination is impermissible based rendering the references unsatisfactory for their intended purposes or require the references' principle of operation to be modified. Both the primary reference and the secondary reference are in the field of analogous art of dryers. The claimed retractable power cord is not considered to render modification of the prior art unsatisfactory for its intended use because a retractable power cord in primary reference would allow a user to operate the independently claimed dryer to provide an electrical power means to the dryer to perform its intended use, i.e. drying. Likewise the principle operation of Jones is drying and the proposed modification of the claimed retractable power cord, would not change the principle operation of the drying of that reference, because drying would be

Art Unit: 3749

accomplished regardless of how the drying is electrically power. Secondary reference Chan is considered to obviate the claimed invention and examiner respectfully disagrees with appellant's assertion to the contrary.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

Stephen Gravini



Conferees:

Ehud Gartenberg SPE



Kenneth Rinehart

